



AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Emmanuelle Belli
Serial No.: 09/966,751
Filed: October 1, 2001
Title: *Long-Retention Hairstyling Gel*

Art Unit: 1617
Examiner: Hui, San Ming R

Mail Stop AF

U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulaney Street
Alexandria, VA 22314

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicants request review of the rejections in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

A petition for an extension of time is submitted herewith.

The review is requested for the following remarks.

Claims 26, 28-35, 37-39 and 41-48 are pending.

Rejections under 35 U.S.C. § 103(a)

Midha in view of Gebhard

The Examiner has maintained the rejections of claims 26, 28-35 and 37-39 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,986,015 to Midha et al. ("Midha") in view of U.S. Patent No. 5,612,397 to Gebhard et al. ("Gebhard"). Claims 28-35 and 37-38 depend from independent claim 26. Claim 39 is an independent claim.

Claim 26 relates to a cosmetic composition which includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer that includes as principal monomers, (1) at least one monomer selected from the group consisting of C₁₋₂₀ alkyl acrylate, N-mono-(C₂₋₁₂) alkylacrylamide, N-mono-(C₂₋₁₂) alkylmethacrylamide, N, N-di-(C₂₋₁₂) alkylacrylamide and N, N-di-(C₂₋₁₂) alkylmethacrylamide, and (2) at least one monomer selected from the group that includes acrylic acid, methacrylic acid, and acrylic and methacrylic acids, the polymer having a structure including hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, wherein the fixing film-forming polymer that is a branched block copolymer includes n-butyl acrylate, acrylic acid, methacrylic acid, and

allyl methacrylate and has at least two glass transition temperatures. The cosmetic composition further includes at least one thickening agent that is a cross-linked or non-cross-linked homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid, and at least one co-thickening agent that is a non-cellulosic thickening polymer different from thickening agent (b). Claim 39 relates to a method for the styling and fixing of hair which includes applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer that includes as principal monomers, (1) at least one monomer selected from the group that includes C₁₋₂₀ alkyl acrylate, N-mono-(C₂₋₁₂) alkylacrylamide, N-mono-(C₂₋₁₂) alkylmethacrylamide, N,N-di-(C₂₋₁₂) alkylacrylamide and N,N-di-(C₂₋₁₂) alkylmethacrylamide, and (2) at least one monomer selected from the group that includes acrylic acid, methacrylic acid, and acrylic and methacrylic acids, the polymer having a structure including hydrophobic blocks onto which more hydrophilic blocks are attached via bi-functional units, wherein the fixing film-forming polymer has at least two glass transition temperatures. The cosmetic composition further includes at least one thickening agent that is a homopolymer or copolymer based on acrylic acid or methacrylic acid or acrylic and methacrylic acid that is cross-linked or non-cross-linked, and at least one co-thickening agent that is a non-cellulosic thickening polymer different from thickening agent (b), wherein the composition has a viscosity of at least about 1.9 Pa.s.

Applicants have discovered a cosmetic composition containing branched block copolymers that does not have fluidification problems. See specification at p. 2-3. In addition to the branched block copolymers, the composition contains at least one thickening agent based on (meth)acrylic polymers and at least one non-cellulosic thickening polymer functioning as a co-thickening agent. See specification at p. 4.

Midha describes "an improved method of making hydrophobic and hydrophilic graft polymers" See Abstract of Midha. As acknowledged by the Examiner, Midha does not "teach the employment of the herein claimed branched block copolymer and the herein claimed thickeners in a cosmetic hair gel composition." See Office Action at p. 3. Midha describes "an improved method of making hydrophobic and hydrophilic graft polymers" See Abstract of Midha. Midha does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block

copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer. Midha further does not teach or suggest a method for the styling and fixing of hair that includes applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer. Further, as acknowledged by the Examiner, Midha does not "expressly teach the employment of the herein claimed branched block copolymer and the herein claimed thickeners in a cosmetic hair gel composition." See Office Action at p. 3.

This defect is not remedied in Gebhard. Gebhard describes a "composition having wet state clarity includes an aqueous latex binder combination of polymer particles with a diameter of less than 80 nanometers and a thickener." See Abstract of Gebhard. Specifically, Gebhard is concerned with solving "the problem of dull appearance of a glitter composition by improving its wet state clarity." See col. 1, lines 54-56 of Gebhard. Gebhard further refers to the use of such compositions in "artist, craft and hobby paints." See col. 1, lines 1-4 of Gebhard. Gebhard is not concerned with a thickening system capable of satisfactorily thickening or gelling a hairstyling composition based on the novel fixing copolymers described in claims 26 and 39. A person of skill in the art would not have been motivated by Gebhard to use or make a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer having at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer.

Gebhard does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer. Gebhard further does not teach or suggest a method for the styling and fixing of hair that includes applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass

transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer.

None of the above-cited references, alone or in combination, teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer. None of the above-cited references, alone or in combination, teach or suggest a method for the styling and fixing of hair that includes applying to the hair a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent that is a non-cellulosic thickening polymer.

Accordingly, claim 26 and dependent claims thereof and claim 39 are patentable over the combination of Midha and Gebhard for at least the reasons described above.

Midha in view of Merck

The Examiner has rejected claims 41-44 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck Index, 11th ed., 1989, monograph 4486 ("Merck"). Claims 42-44 depend from independent claim 41.

As previously discussed, Midha does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent.

Merck does not remedy this defect either. Merck is cited by the Examiner to show that "guar gum is a well-known thickening agent" See Office Action at p. 7. Merck does not teach or suggest a cosmetic composition that includes a cosmetically acceptable carrier that includes at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent.

Since claims 42-44 depend on claim 41, they are patentable over the combination of Midha and Merck for at least the reasons described above.

Midha in view of Merck and Gebhard

The Examiner has rejected claims 45-48 under 35 U.S.C. § 103(a) as being unpatentable over Midha in view of Merck and Gebhard. Claims 46-48 depend from independent claim 45.

Applicants have discovered a method for the styling and fixing of hair that includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer wherein the fixing film-forming polymer has at least two glass transition temperatures, at least one thickening agent and at least one co-thickening agent.

As previously discussed, Midha, Gebhard and Merck do not teach or suggest a method for the styling and fixing of hair that includes applying to the hair a cosmetic composition including a cosmetically acceptable carrier containing at least one fixing film-forming polymer that is a branched block copolymer, at least one thickening agent and at least one co-thickening agent.

Since claims 46-48 depend on claim 45, they are patentable over the combination of Midha, Merck and Gebhard for at least the reasons described above.


CONCLUSION

In light of the foregoing remarks, Applicant respectfully contends that all conditions of patentability are met. Allowance of the claims is therefore respectfully solicited. The Director is authorized to charge any fees required by the present Request to Deposit Account 19-4293.

Respectfully submitted,

Date: 6-11-07

Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Telephone: 202-429-3000
Facsimile: 202-429-3902



Harold H. Fox
Reg. No. 41,498